IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 704 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUJI NANJI DODIYA & 2 - Appellant(s)
Versus
RABARI VALJIBHAI CHELABHAI & 2 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
MR SAURABH M PATEL for Respondent No.1,
NONE for Respondent No.2,
MS VIRAJ FOJDAR for Respondent No.3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2007

ORAL JUDGMENT

1. Mr.Rajni H.Mehta, learned counsel for the appellants, Mr.Saurabh M.Patel, learned counsel for the respondent

No.1. None for the respondent No.2. Ms.Viraj Fojdar, under the authority of Mr.Shalin Mehta, learned counsel for the respondent No.3.

2. The appellants, being aggrieved by the award dtd.8/2/1990 passed by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad in Motor Accident Claim Petition No.582 of 1984, are before this Court with a submission that the tribunal erred in awarding a sum of Rs.65,000=00 in favour of the claimant.

3. Short facts necessary for disposal of the present appeal are that there was a collision between Matador No.GRT-8802 driven by the respondent No.1 (Original claimant), owned by the respondent No.2, insured with the respondent No.3 with Motor-Truck No.GTF-4322 alleged to be driven by the appellant No.1, owned by the appellant No.2 and insured with the appellant No.3.

4. Mr.Mehta, learned counsel for the appellants submits that in view of the judgment of the Supreme Court, a joint appeal at the instance of the driver, owner and insurer would not be maintainable, therefore, the appellant No.3 – Insurance Company be allowed to be deleted.

5. The prayer is granted. The office is hereby directed to delete the name of the appellant No.3 – Insurance

Company from the array of the appellants. Let necessary amendment be made by the office within a period of ten days.

6. Taking me through the evidence, Mr.Mehta, learned counsel for the appellants submitted that the tribunal was unjustified in holding the appellant No.1 guilty of rashness and negligence. He also submitted that the tribunal also erred in awarding a sum of Rs.36,000=00 under the head of future loss.

7. From the evidence recorded by the learned tribunal and the evidence available on the records, it would clearly appear that the driver of the truck was negligent to the extent of 100%. Being in general agreement with the findings recorded by the tribunal, I hold that the driver of the offending truck bearing GTF-4322 was negligent to the extent of 100% and the tribunal was not unjustified in recording such a finding.

8. The claimant in the said road accident had suffered fracture on left thigh and had suffered injuries below knee and also on the right thigh. He also sustained severe injuries on his leg, mouth and other parts of the body. For such a sufferings if the claimant has been awarded a sum of Rs.20,000=00, the same cannot be condemned to

be a bad amount. The tribunal was also justified in holding the monthly loss at Rs.250=00 or Rs.3000=00 per year.

9. Taking into consideration the totality of the circumstances, I am unable to hold that the tribunal was unjustified in making the award in favour of the respondent No.1 – claimant against the interest of the appellant Nos.1 and 2 and the deleted appellant No.3 – Insurance Company.

10. The appeal is dismissed. No costs.

(R.S. GARG, J.)

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